

- SUBJECT:** Prohibiting insurers from owning auto body repair facilities
- COMMITTEE:** Licensing and Administrative Procedures — favorable, without amendment
- VOTE:** 7 ayes — Hamilton, Raymond, Driver, Eissler, Goolsby, D. Jones, Wise
0 nays
1 present not voting — Homer
1 absent — Flores
- WITNESSES:** For — Larry Cernosek, Texas Towing and Storage Association; Tom Fuller; Galt Graydon, Consumer Choice in Autobody Repair; William J. Haas, Automotive Service Association; Dell R. Shaw, AASP and Dawson Neighborhood Association; David Shoemaker, Toyota of Irving; Alan Walne; Freddy Warner, Automotive Wholesalers of Texas and State Auto Parts and Repair Industry Association; (*Registered but did not testify:*) Lee Chapman, New Car Dealers Association of Greater Tarrant County; Jeff Clark, National Federation of Independent Business; Walter Wainwright, Houston Automobile Dealers Association
- Against — Peggy Burrows and Jo Betsy Norton, Allstate Insurance Co.; Franco Carbajal; Bill Hammond, Texas Association of Business; Sharon Mazanec and Tim Swift, Sterling Autobody Centers; Henry Moon; Anne O’Ryan, AAA Texas; Ignacio Rodriguez
- BACKGROUND:** When a person presents a claim to an auto insurer under a policy issued by the insurer, Insurance Code Art. 5.07-1(e) requires the insurer to provide notice that the insurer cannot:
- require the claimant to use a particular type or supplier of auto part to repair damage to a vehicle covered under the insurance policy;
 - restrict the claimant’s selection of a person or business to repair the vehicle, including by requiring the claimant to travel an unreasonable distance to secure the repair;

- solicit or accept a referral fee or gratuity from a repair person or shop;
or
- suggest that the claimant must use a particular repair person or shop to complete the repair.

DIGEST:

HB 1131 would prohibit an insurer from holding or acquiring any ownership interest in a repair facility, defined as a person that repairs or replaces the auto body of a damaged motor vehicle. An aggrieved person could file suit to compel the insurer to comply, and a plaintiff who prevailed in such an action could recover reasonable attorney's fees and costs. A motor vehicle insurer as defined by the bill would include a county mutual insurance company, a Lloyd's plan, a reciprocal or interinsurance exchange, and an affiliate as defined by Insurance Code, sec. 823.003.

An insurer that owned an interest in a repair facility on the bill's effective date would have to sell its interest not later than September 1, 2005. Until such divestiture, the insurer would have to give written notice to each insured that the insured could select any repair facility of his choosing. The insurer would have to provide the notice when it delivered an insurance policy and when an insured party reported a claim.

The bill would take effect September 1, 2003, except that the authority for legal action to compel compliance would take effect September 1, 2005.

**SUPPORTERS
SAY:**

HB 1131 would prohibit insurer ownership of auto body repair shops because such ownership creates too strong an incentive for insurers to profit unfairly at consumers' expense. By repairing property it also insures, an insurer can profit greatly by performing inexpensive, substandard repairs. In this process, the consumer misses the benefit of the unbiased expertise and opinion of an independent repair facility. Consumers suffered when health maintenance organizations formed close relationships with medical providers. Similarly, consumers will suffer under the practices of insurers that operate repair facilities.

The bill would eliminate an incentive for insurers who own auto body shops to violate existing law that prohibits them from "steering" claimants to certain repair facilities. Insurers do not monitor their employees closely enough to know whether they refrain from telling people to use certain repair facilities,

and the Insurance Code provides no remedy for such a violation. An insurer that owns an auto repair shop likely would steer policyholders to its own repair business in violation of the law.

Insurers' ownership of repair facilities creates an uneven playing field for small businesses. Some smaller businesses will close as a result of future expansion by Sterling Autobody Centers, whose growth is fueled by referrals from Allstate, an insurance affiliate of Sterling's parent firm. Similarly, an affiliate of the American Automobile Association owns an interest in a repair facility in Texas. The recent history of large insurers in Texas, including the overcharging of consumers, provides warning of their likely practices in new markets they enter.

HB 1131 would require a reasonable remedy with legal precedent. Courts have ruled that legislatures can require business divestiture to advance public welfare. The bill would provide adequate time — until September 2005 — for insurers to sell their interests in repair shops without suffering economic harm. The bill would not require any existing repair facility to close.

**OPPONENTS
SAY:**

HB 1131 would extinguish a legitimate business practice that benefits consumers, insurers, and workers. By integrating insurance and auto body repair businesses, insurers improve the uniformity, quality, and timeliness of repairs. Insurers reduce their exposure to fraud and the bill-padding practices of independent repair facilities and reduce the cost of contracting and performing compliance work. By owning repair facilities, insurers can extend their employment benefits to a larger population of workers.

For example, since acquiring Sterling Autobody Centers, Allstate's parent company has improved the quality and timeliness of repairs for policyholders. Sterling customers report a satisfaction rate that exceeds 90 percent, and the company guarantees its parts and service. Moreover, Sterling employees enjoy high wages, subsidized health benefits, and work schedules that allow them three days off each week. Sterling's rapid growth proves its superior service and management, much of which is due to its affiliation with Allstate.

Businesses often integrate the services they offer because it creates efficiency. In the automobile industry, car manufacturers acquire parts manufacturers,

dealerships open repair facilities, and independent repair facilities operate towing services.

In 2002, California's state assembly declined to enact legislation that would have prohibited an insurer from acquiring any ownership interest in an auto body repair shop. Instead, a committee will consider a bill that only would prohibit an insurer from recommending repair at a specific repair facility "unless the claimant specifically requests a referral from the insurer."

Texas' Insurance Code already requires a similar protection. The required disclosures protect independent repair facilities from the consequences of anticompetitive "steering" practices. In 2002, Allstate financed 167,000 auto body repairs, of which Sterling performed only 5,300.

The divestiture requirement of HB 1131 could prove unconstitutional with respect to insurers that already operate repair facilities in the state. Texas Constitution, Art. 1, sec. 17 prohibits the taking of property by government without compensation. Art. 3, sec. 56 prohibits passage of any "special law" regulating trade. HB 1131 would implicate these provisions in relation to Allstate's ownership of Sterling.

**OTHER
OPPONENTS
SAY:**

HB 1131 would go too far by prohibiting insurers from competing for auto body repair business. Rather than prohibit this healthy competition, the Legislature simply should amend the Insurance Code to authorize a private cause of action against an insurer for "steering" repair business to the insurer's own repair facility.

NOTES:

The companion bill, SB 435 by Carona, has been referred to the Senate Business and Commerce Committee.